



Western Australia

## **Retail Trading Hours Act 1987**

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## **Retail Trading Hours Act 1987**

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Western Australia

## **Retail Trading Hours Act 1987**

**An Act relating to the hours of trading for retail shops and for other and incidental purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Retail Trading Hours Act 1987*<sup>1</sup>.

### **2. Commencement**

The provision of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation<sup>1</sup>.

### **3. Terms used in this Act**

(1) In this Act unless the context otherwise requires —

**agreement** includes any agreement containing provisions, whether express or implied, under or by virtue of which —

- (a) a person authorises, permits or requires a person operating a retail shop to use, in connection with the retail sale of goods or services at the retail shop, a mark identifying, commonly associated with or controlled by that first-mentioned person;
- (b) a person grants a right to, or otherwise authorises or permits, a person operating a retail shop to possess, occupy or use the retail shop in connection with the sale of any goods or the provision of any services;
- (c) a person is entitled or required to supply goods or provide services to the person operating a retail shop for retail sale by the person operating the retail shop; or
- (d) a person operating a retail shop agrees with another person to acquire goods or services from another person (whether a party to the agreement or not) for retail sale by the person operating the retail shop;

**authorised person** means a person authorised in writing by the chief executive officer;

**chief executive officer** means the chief executive officer of the department principally assisting the Minister in the administration of this Act;

**Committee** means the Retail Shops Advisory Committee established under section 17;

**filling station** means a retail shop referred to in section 10(5);

**fuel** means fuel for operating a motor vehicle;

**inspector** means a person designated as an inspector under section 7;

**member** means a member of the Committee;

**motor vehicle** has the meaning given to that term in the *Road Traffic Act 1974* section 5(1);

**motor vehicle shop** means a general retail shop or portion of a general retail shop, as the case may be —

- (a) in, on or from which motor vehicles are sold by way of retail sale; or
- (b) in, on or from which spare parts for motor vehicles are sold by way of retail sale in conjunction with the sale of motor vehicles;

**operate** means, in relation to a retail shop, conducting or carrying on the business of a retail shop and includes causing, employing or engaging another person to carry on or conduct that business;

**place** includes a building, stall, tent, vehicle, boat or vessel;

**prescribed services** means any one or more of the following services —

- (a) hairdressing;
- (b) pawnbroking or dealing in second-hand goods under the *Pawnbrokers and Second-hand Dealers Act 1994*;
- (c) broking marine craft or motor vehicles;
- (d) such other services as may be prescribed;

**retail sale** means a sale of goods or services that is not for the purposes of their re-sale;

**retail shop** means any place at, in, on or from which —

- (a) goods are sold by way of retail sale;

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- (b) goods are displayed, kept or sold for retail sale; or
  - (c) prescribed services are provided by way of retail sale;
- sell* includes barter, supply for profit, offer for sale, expose for sale, send forward or deliver for sale, cause or suffer or permit to be sold and disposal or offer for disposal of goods under credit sale agreement or hire purchase agreement.
- (1a) A place that is otherwise a retail shop does not cease to be a retail shop by reason only that meals or refreshments or both are also sold at that place.
  - (2) For the purposes of this Act a place at which —
    - (a) orders are received or obtained for the retail sale of goods or services; or
    - (b) goods are held or stored for the purposes of retail sale,is a retail shop notwithstanding that the goods or services are supplied, or, the orders are received or obtained, at another place.
  - (3) Notwithstanding anything in this Act, a place at which meals or refreshments are sold or served only to persons who are employed or engaged at that place is not a retail shop for the purposes of this Act.
  - (4) For the purposes of this Act the metropolitan area means the part of the State within the area described in the regulations.  
*[Section 3 amended by No. 1 of 1991 s. 4 and 14; No. 88 of 1994 s. 100; No. 47 of 2006 s. 4.]*

**4. Application**

- (1) This Act applies only to the part of the State south of the 26th parallel of South Latitude.
- (2) This Act does not apply to a place that is used for or in connection with —



- (a) a show held by an incorporated agricultural or horticultural society;
  - (b) a bazaar or fair the proceeds of which are intended for religious, charitable or public purposes.
- (3) This Act does not apply to a place that is used as —
- (a) a restaurant or a cafe;
  - (b) a take-away-food shop;
  - (c) a veterinary clinic; or
  - (d) a retail shop and is located in a public passenger transport terminal or station where public passenger transport services are running.

- (4) Nothing in this Act affects the sale or supply of liquor at licensed premises under the *Liquor Control Act 1988*.

*[Section 4 amended by No. 73 of 2006 s. 115.]*

**5. Interpretation Act applies to orders**

- (1) An order made by the Minister under this Act is subsidiary legislation as defined in the *Interpretation Act 1984* section 5.
- (2) The *Interpretation Act 1984* section 42 applies to an order made under section 10(3b) or 14B(4) as if the order were a regulation.

*[Section 5 inserted by No. 47 of 2006 s. 5.]*

## **Part II — Administration**

### **6. Officers**

There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers and other persons as are necessary for the administration of this Act.

*[Section 6 amended by No. 32 of 1994 s. 3(2).]*

### **7. Inspectors**

The chief executive officer may designate any person referred to in section 6 as an inspector.

*[Section 7 amended by No. 1 of 1991 s. 14.]*

### **8. Certificate of identity**

The chief executive officer shall furnish an inspector with a certificate signed by the chief executive officer certifying that that person has been designated an inspector.

*[Section 8 amended by No. 1 of 1991 s. 14.]*

### **9. Inspector subject to chief executive officer**

In carrying out the functions conferred on an inspector by this Act the inspector shall give effect to any direction given by the chief executive officer.

*[Section 9 amended by No. 1 of 1991 s. 14.]*

### **Part III — Retail trading hours**

#### **10. Categories of retail shops**

- (1) For the purposes of this Act retail shops are assigned different categories as follows —
  - (a) general retail shops;
  - (b) small retail shops;
  - (c) special retail shops; and
  - (d) filling stations.
- (2) Subject to this Act, any retail shop that is not a small retail shop, a special retail shop or a filling station shall be regarded as a general retail shop.
- (3) Subject to this Act, a retail shop shall be regarded as a small retail shop if —
  - (a) neither motor vehicles, nor goods or services prescribed for the purposes of this paragraph, are sold or provided at the retail shop;
  - (b) the retail shop is owned by one eligible person or not more than 6 eligible persons trading in partnership or by a body corporate with not more than 6 shareholders all of whom are eligible persons;
  - (ba) the retail shop is operated for the benefit of the eligible persons referred to in paragraph (b);
  - (bb) the eligible persons referred to in paragraph (b) are personally and actively engaged in the retail shop;
  - (bc) not more than 13 persons (inclusive of the eligible persons who own and operate the retail shop but excluding any person who is employed at the retail shop as an apprentice under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2) work in the retail shop at any one and the same time;

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- (bd) the retail shop is owned and operated in accordance with the directions given under subsection (3b);
  - (be) no owner of the retail shop is related, in the opinion of the chief executive officer, to an owner of another retail shop that is in such close proximity to the first-mentioned retail shop that, in the opinion of the chief executive officer, those retail shops are to be regarded as occupying the same location; and
  - (c) the chief executive officer has issued a certificate in relation to the retail shop certifying that it is a small retail shop in terms of this subsection, and that certificate has not been cancelled.
- (3a) A person is not an eligible person for the purposes of subsection (3) unless —
- (a) in relation to a case where the person is the only person in question the person —
    - (i) is a natural person; and
    - (ii) does not own or operate, either alone or together with any other person, more than 3 retail shops except as a shareholder in a listed corporation as defined in the *Commonwealth Corporations Act 2001* section 9;
  - (b) in relation to a case where the person in question is one of a group of persons, the person —
    - (i) is a person to whom the provisions of paragraph (a)(i) and (ii) apply;
    - (ii) does not own or operate another retail shop together with a person who is outside that group of persons;
    - (iii) does not himself or herself own or operate a retail shop alone if 2 or more other persons in the group each own or operate a retail shop that is not owned or operated together with the other persons in the group; and

- (iv) does not himself or herself own or operate a retail shop alone if another person in the group owns or operates 2 or more retail shops that are not owned or operated together with the other persons in the group.
- (3aa) The matters that the chief executive officer may have regard to when determining whether an owner of a retail shop is related to an owner of another retail shop for the purposes of subsection (3)(be) include —
- (a) whether one owner is —
    - (i) the spouse or de facto partner of the other owner;
    - (ii) a child of the other owner or of the spouse or de facto partner of the other owner;
    - (iii) a parent of the other owner or of the spouse or de facto partner of the other owner; or
    - (iv) a brother or sister of the other owner or of the spouse or de facto partner of the other owner;
  - (b) whether one owner is a related body corporate in relation to the other owner;
  - (c) whether one owner is a corporation and the other owner is —
    - (i) an officer of the corporation; or
    - (ii) a majority shareholder in the corporation;
  - (d) whether one owner is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other owner in relation to the operation of the first-mentioned owner's retail shop;
  - (e) whether one owner is —
    - (i) an employee or partner of the other owner; or

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- (ii) an agent, banker, solicitor, accountant, auditor or other person acting in any capacity for or on behalf of the other owner;
- and
- (f) whether one owner is —
  - (i) a trustee for the other owner; or
  - (ii) a trustee of a trust of which the other owner is a discretionary or other beneficiary.
- (3ab) In subsection (3aa) —
  - corporation* has the meaning given to that term in the Commonwealth *Corporations Act 2001* section 57A;
  - officer* has the meaning given to that term in the Commonwealth *Corporations Act 2001* section 9;
  - related body corporate* has the meaning given to that term in the Commonwealth *Corporations Act 2001* section 9.
- (3ac) A person who operates a small retail shop is required to notify the chief executive officer within 14 days after —
  - (a) a person becomes or ceases to be an owner of the retail shop; and
  - (b) if the owner of the retail shop is a body corporate — a person becomes or ceases to be a shareholder of the body corporate.
- (3b) The Minister may by order give directions for the purposes of subsection (3) and any such order may include directions with respect to —
  - (a) the persons who shall be, and, the persons who shall not be, regarded as owners for the purposes of subsection (3);
  - (b) the persons for whose benefit a small retail shop may be owned and operated; and

- (c) the extent to which any person other than a person who owns or operates a small retail shop may benefit from the operation of the small retail shop;
- (d) the extent to which the natural persons who operate the retail shop shall be personally and actively engaged in the operations of the retail shop;
- (e) such other matters (including a requirement that any statement made for the purposes of this section be verified by statutory declaration) as the Minister considers necessary,

and effect shall be given to any such order.

*[(3c) deleted]*

- (3d) A person who is aggrieved by a decision of the chief executive officer refusing the issue of a certificate under subsection (3)(c) may appeal to the Minister whose decision is final.
- (4) Subject to this Act, a retail shop shall be regarded as a special retail shop if —
  - (a) a certificate is issued by the chief executive officer in relation to the retail shop specifying it to be a special retail shop within one of the categories of special retail shops prescribed for the purposes of this paragraph; and
  - (b) only the goods or services or both that are prescribed in relation to a special retail shop of that category are sold or provided at the retail shop.
- (5) A retail shop shall be regarded as a filling station if the whole or part of the business of the retail shop constitutes the sale of fuel and for the purposes of this Part any pump or contrivance in a filling station for supplying fuel is deemed to be included in the filling station.

*[Section 10 amended by No. 1 of 1991 s. 6 and 14; No. 47 of 2006 s. 6; No. 44 of 2008 s. 60.]*

**s. 11**

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**11. Issue and cancellation of certificates for small retail shops and special retail shops**

- (1) A person who desires to operate a small retail shop or a special retail shop at any place shall apply to the chief executive officer for a certificate in relation to that place in accordance with the regulations.
- (2) If the chief executive officer is satisfied in relation to an application under subsection (1) that there is no reason for the refusal of the application the chief executive officer shall issue a certificate in terms of the application.
- (3) The chief executive officer shall not issue a certificate certifying a filling station to be a small retail shop or a special retail shop.
- (4) The chief executive officer may cancel a certificate certifying a retail shop to be a small retail shop or a special retail shop if the chief executive officer is satisfied —
  - (a) in relation to a small retail shop —
    - (i) that any motor vehicle is, or any goods or service prescribed for the purposes of section 10(3)(a) are, sold or provided at that retail shop;
    - (ii) that the retail shop is not owned or operated in terms of section 10(3) and (3b); or
    - (iii) that notification has not been given as required by section 10(3ac);or
  - (b) in relation to a special retail shop —
    - (i) that any goods or service other than goods or service prescribed as goods or a service in relation to a special retail shop of that category, are sold or is provided at that retail shop; or
    - (ii) that the special retail shop is operated during the hours it is required to be closed under this Act.



- (5) Where under subsection (4) the chief executive officer cancels a certificate certifying a retail shop to be a small retail shop or a special retail shop the retail shop shall be deemed to be a general retail shop for the purposes of this Act.
- (6) The cancellation of a certificate under this section does not prevent a person from being prosecuted for an offence against this Act.

*[Section 11 amended by No. 1 of 1991 s. 7 and 14; No. 47 of 2006 s. 7.]*

**12. Trading hours for retail shops**

- (1) Subject to this Act and any order made under section 12E(1) that affects the trading hours of the general retail shop, a general retail shop shall be closed —
  - (a) on Monday, Tuesday, Wednesday and Friday in each week until 8 a.m. and from and after 6 p.m.;
  - (b) on Thursday in each week, until 8 a.m. and from and after 9 p.m.;
  - (c) on Saturday in each week, until 8 a.m. and from and after 5 p.m.;
  - (d) on Sunday in each week; and
  - (e) on each public holiday and public half-holiday.
- (2) Subsection (1) does not apply to —
  - (a) a general retail shop in a tourism precinct or holiday resort, as defined in section 12A(4);
  - (b) a general retail shop to which an order under section 12A applies by the operation of subsection (3) of that section; or
  - (c) a motor vehicle shop.

*[Section 12 amended by No. 1 of 1991 s. 8; No. 47 of 2006 s. 8.]*

**s. 12A**

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**12A. Trading hours for general retail shops in tourism precincts and holiday resorts**

- (1) The Minister may by order fix a time or times when general retail shops in a tourism precinct or holiday resort are required to be closed —
  - (a) on any or every day in each week; or
  - (b) on any day or days specified in the order.
- (2) An order may apply to —
  - (a) all general retail shops in the tourism precinct or holiday resort;
  - (b) general retail shops in the tourism precinct or holiday resort of a class specified in the order; or
  - (c) general retail shops in the tourism precinct or holiday resort that are specified in the order.
- (3) An order that applies to general retail shops in a tourism precinct may also apply to general retail shops —
  - (a) that are in the immediate vicinity of the tourism precinct; and
  - (b) that are specified, or that are of a class specified, in the order.
- (4) In this section —

***Fremantle tourism precinct*** means the area or areas prescribed for the purposes of this definition;

***holiday resort*** means the Rockingham holiday resort, Rottnest Island holiday resort or Wanneroo holiday resort;

***Perth tourism precinct*** means the area or areas prescribed for the purposes of this definition;

***Rockingham holiday resort*** means the area or areas prescribed for the purposes of this definition;

***Rottnest Island holiday resort*** means the area or areas prescribed for the purposes of this definition;

**tourism precinct** means the Perth tourism precinct or Fremantle tourism precinct;

**Wanneroo holiday resort** means the area or areas prescribed for the purposes of this definition.

*[Section 12A inserted by No. 47 of 2006 s. 9.]*

**12B. Trading hours for motor vehicle shops**

Subject to this Act and any order made under section 12E(1) that affects the trading hours of the motor vehicle shop, a motor vehicle shop is required to be closed —

- (a) on Monday, Tuesday, Thursday and Friday in each week — until 8 a.m. and from and after 6 p.m.;
- (b) on Wednesday in each week — until 8 a.m. and from and after 9 p.m.;
- (c) on Saturday in each week — until 8 a.m. and from and after 1 p.m.;
- (d) on Sunday in each week; and
- (e) on each public holiday and public half-holiday.

*[Section 12B inserted by No. 47 of 2006 s. 9.]*

**12C. No restriction on trading hours for small retail shops**

A small retail shop may be open at any time.

*[Section 12C inserted by No. 47 of 2006 s. 9.]*

**12D. Trading hours for special retail shops**

Subject to this Act and any order made under section 12E(1) that affects the trading hours of the special retail shop, a special retail shop is required to be closed on every day of the year until 6 a.m. and from and after 11.30 p.m..

*[Section 12D inserted by No. 47 of 2006 s. 9.]*

**s. 12E**

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**12E.      Variation of trading hours**

- (1) The Minister may by order vary the trading hours of retail shops by —
  - (a) requiring retail shops to be closed at a time or times when the shops would otherwise not be required to be closed under section 12(1), 12B or 12D; or
  - (b) authorising retail shops to be open at a time or times when the shops would otherwise be required to be closed under any of those provisions.
- (2) An order varying the trading hours of general retail shops in the metropolitan area (other than an order under section 12A) can have effect only —
  - (a) in relation to a day or days within the period of 28 days ending on 1 January; or
  - (b) to extend the trading hours of general retail shops on a particular day to no later than 9 p.m. for the purpose of compensating for trading hours that are lost by general retail shops in the metropolitan area on a particular day in the same week between 6 p.m. and 9 p.m. because of a public holiday or public half-holiday.
- (3) Subject to subsection (2), an order varying the trading hours of general retail shops may apply to —
  - (a) all general retail shops;
  - (b) general retail shops of a specified class;
  - (c) general retail shops in a specified area; or
  - (d) a specified general retail shop.
- (4) An order varying the trading hours of motor vehicle shops may apply to —
  - (a) all motor vehicle shops;
  - (b) motor vehicle shops of a specified class;
  - (c) motor vehicle shops in a specified area; or

- (d) a specified motor vehicle shop.
- (5) An order varying the trading hours of special retail shops may apply to —
  - (a) all special retail shops;
  - (b) special retail shops of a specified class;
  - (c) special retail shops in a specified area; or
  - (d) a specified special retail shop.
- (6) An order varying the trading hours of retail shops may apply to —
  - (a) all retail shops; or
  - (b) any specified portion of retail shops,in which one or more classes of specified goods or services, or goods and services, are sold or provided.
- (7) An order varying the trading hours of retail shops may apply to —
  - (a) any or every day in each week; or
  - (b) a specified day or specified days.
- (8) In this section —  
***specified***, in relation to an order, means specified in the order.  
*[Section 12E inserted by No. 47 of 2006 s. 9.]*

*[13. Deleted by No. 47 of 2006 s. 10.]*

**14. No restriction on trading hours for filling stations**

A filling station may be open at any time.

*[Section 14 inserted by No. 47 of 2006 s. 11.]*

**s. 14A**

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**14A. Sale of goods at filling stations**

- (1) A person who operates a filling station is not, at any time outside the trading hours referred to in section 12(1), to sell or allow to be sold at the filling station any thing that is not —
- (a) fuel or an accessory;
  - (b) one of the goods prescribed for the purposes of this paragraph;
  - (c) in the case of a small filling station — fuel or an accessory or one of the goods prescribed for the purposes of paragraph (b) or this paragraph; or
  - (d) in the case of a prescribed small filling station — fuel or an accessory or one of the goods prescribed for the purposes of paragraph (b) or (c) or this paragraph.
- (2) In this section —
- accessory** means —
- (a) lubricant in any form, tyre, tube, battery, part or accessory; or
  - (b) any other thing, other than fuel, required to equip or operate a motor vehicle.

*[Section 14A inserted by No. 47 of 2006 s. 11.]*

**14B. Small filling stations**

- (1) For the purposes of section 14A(1)(c), a filling station is to be regarded as a small filling station if —
- (a) the filling station is owned by —
    - (i) one eligible person;
    - (ii) not more than 6 eligible persons trading in partnership; or
    - (iii) a body corporate with not more than 6 shareholders all of whom are eligible persons;
  - (b) the filling station is operated for the benefit of the eligible persons referred to in paragraph (a);

- (c) the eligible persons referred to in paragraph (a) are personally and actively engaged in the filling station;
  - (d) not more than 10 persons (including the eligible persons who own and operate the filling station) work in the filling station at any one and the same time;
  - (e) the filling station is owned and operated in accordance with the directions given under subsection (4); and
  - (f) the chief executive officer has issued a certificate in relation to the filling station certifying that it is a small filling station in terms of this subsection, and that certificate has not been cancelled.
- (2) A person is not an eligible person for the purposes of subsection (1) unless —
- (a) in relation to a case where the person is the only person in question, the person —
    - (i) is a natural person; and
    - (ii) does not own or operate, either alone or together with any other person, more than 3 filling stations except as a shareholder in a listed corporation as defined in the *Commonwealth Corporations Act 2001* section 9;
  - (b) in relation to a case where the person in question is one of a group of persons, the person —
    - (i) is a person to whom the provisions of paragraph (a)(i) and (ii) apply;
    - (ii) does not own or operate another filling station together with a person who is outside that group of persons;
    - (iii) does not himself or herself own or operate a filling station alone if 2 or more other persons in the group each own or operate a filling station that is not owned or operated together with the other persons in the group; and

**s. 14C**

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- (iv) does not himself or herself own or operate a filling station alone if another person in the group owns or operates 2 or more filling stations that are not owned or operated together with the other persons in the group.
- (3) A person who operates a small filling station is required to notify the chief executive officer within 14 days after —
  - (a) a person becomes or ceases to be an owner of the filling station; and
  - (b) if the owner of the filling station is a body corporate — a person becomes or ceases to be a shareholder of the body corporate.
- (4) The Minister may by order give directions for the purposes of subsection (1) and any such order may include directions with respect to —
  - (a) the persons who are to be, and the persons who are not to be, regarded as owners for the purposes of subsection (1);
  - (b) the extent to which any person other than a person who owns or operates a small filling station may benefit from the operation of the small filling station;
  - (c) the extent to which the natural persons who operate the filling station are to be personally and actively engaged in the operations of the filling station;
  - (d) such other matters (including a requirement that any statement made for the purposes of this section be verified by statutory declaration) as the Minister considers necessary,

and effect is to be given to any such order.

*[Section 14B inserted by No. 47 of 2006 s. 11.]*



**14C. Issue and cancellation of certificates for small filling stations**

- (1) A person who desires to operate a small filling station at any place is to apply to the chief executive officer for a certificate in relation to that place in accordance with the regulations.
- (2) If the chief executive officer is satisfied in relation to an application under subsection (1) that there is no reason for the refusal of the application, the chief executive officer is to issue a certificate in terms of the application.
- (3) A person who is aggrieved by a decision of the chief executive officer refusing the issue of a certificate under subsection (2) may appeal to the Minister, whose decision is final.
- (4) The chief executive officer may cancel a certificate certifying a filling station to be a small filling station if the chief executive officer is satisfied —
  - (a) that any thing other than —
    - (i) fuel or an accessory (as defined in section 14A(2)); or
    - (ii) goods prescribed for the purposes of section 14A(1)(b), (c) or (in the case of a prescribed small filling station) (d),  
are sold at the filling station outside the trading hours referred to in section 12(1);
  - (b) that the filling station is not owned or operated in accordance with section 14B(1) and (4); or
  - (c) that notification has not been given as required by section 14B(3).
- (5) The cancellation of a certificate under this section does not prevent a person from being prosecuted for an offence against this Act.

*[Section 14C inserted by No. 47 of 2006 s. 11.]*

**s. 15**

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**15. Permits**

- (1) Despite the provisions of this Part —
- (a) a person who operates a retail shop;
  - (b) a body consisting of, or representing, persons who operate a class of retail shops or retail shops in a part of the State; or
  - (c) a local government, at the request of a person referred to in paragraph (a) or a body referred to in paragraph (b) in respect of a retail shop or retail shops, as the case requires, in the local government's district,

may apply to the chief executive officer for a permit —

- (d) to open the retail shop operated by the person or the retail shops operated by the persons who are members of, or represented by, the body, as the case requires, at times when the shop or shops would otherwise be required to be closed by section 12, 12B or 12D or by order under section 12A or 12E; or
  - (e) to sell goods, or to allow goods to be sold, or to provide services despite those goods or services —
    - (i) in the case of small retail shops — being goods referred to in, or goods or services prescribed for the purposes of, section 10(3)(a);
    - (ii) in the case of special retail shops — not being goods or services prescribed for the purposes of section 10(4)(b); or
    - (iii) in the case of filling stations — not being goods referred to in, or prescribed for the purposes of, a relevant paragraph of section 14A(1).
- (2) Where an application is made under subsection (1) and the chief executive officer is satisfied in relation to the shop or class of shops referred to in the application that it is desirable or necessary in the interests of the public that the shop or class of shops should be open or should be permitted to sell goods or

provide services that are of the kind referred to in the application by reason of an event or any circumstances that is or are in the opinion of the chief executive officer relevant the chief executive officer may issue a permit in terms of the application or in such terms as the chief executive officer thinks fit authorising the applicant or applicants to open the shop or shops referred to in the application during such hours or periods as are specified in the permit or to sell such goods or provide such services as are specified in the permit or both.

- (2a) The chief executive officer may issue a permit under subsection (2) to open a retail shop or retail shops only if satisfied that, by reason of the event or circumstances referred to in that subsection, it is not appropriate, or it is not practicable, for an order to be made under section 12A or 12E to vary the trading hours of that shop or those shops.
- (3) The chief executive officer may impose terms and conditions on a permit issued under subsection (2) including conditions as to the closing of retail shops specified in the permit.
- (4) A person who contravenes any term or condition imposed under subsection (3) commits an offence.

Penalty: \$5 000.

*[Section 15 amended by No. 1 of 1991 s. 14; No. 47 of 2006 s. 12 and 17.]*

## **16. Covenants relating to opening of retail shops**

Notwithstanding any rule of law or construction to the contrary, where an agreement, between any person and a person operating a retail shop contains a term or covenant providing for the opening of the shop, whether at specified hours or specified times or not, the person operating the retail shop is not in breach of that term or covenant by reason only of failing to open the retail shop between the hours authorised by this Act.

*[Section 16 amended by No. 1 of 1991 s. 11.]*

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**17.      Retail Shops Advisory Committee**

- (1) There shall be established a Committee to be known as the Retail Shops Advisory Committee.
- (2) The Committee shall consist of 15 persons as follows —
  - (a) one person shall be the chief executive officer or an officer of the Public Service of the State nominated by the chief executive officer who shall be chairman of the Committee; and
  - (b) 14 persons shall be appointed by the Minister as follows —
    - (i) 2 persons shall be appointed on the written nomination of the body known as the W.A. Council of Retail Associations;
    - (ia) one person shall be appointed on the nomination of the body known as the Retail Traders Association of W.A. (Inc.);
    - (ii) one person shall be appointed on the written nomination of the body known as the W.A. Chamber of Commerce and Industry (Inc.);
    - (iii) 4 persons shall be appointed on the written nomination of the body known as the Shop Distributive and Allied Employees Association of Western Australia;
    - (iv) 5 persons shall be persons who in the opinion of the Minister are representative of consumers;
    - (v) one shall be a person who in the opinion of the Minister represents the tourist industry.
- (3) The Minister may make such arrangements as the Minister considers appropriate for the receipt of nominations for the purposes of an appointment under subsection (2)(b).

- (4) A member appointed under subsection (2)(b) —
  - (a) shall hold office for such term not exceeding 3 years as is specified in the instrument appointing that member;
  - (b) is, on the expiration of the term of office of that member, eligible for re-appointment.
- (5) A member appointed under subsection (2)(b) is entitled to such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management<sup>2</sup>, determines.
- (6) A nomination for the purposes of subsection (2)(a) may be made so as to operate in relation to such circumstances as are specified in the instrument of nomination and may be amended or revoked by the chief executive officer.

*[Section 17 amended by No. 1 of 1991 s. 12 and 14.]*

**18. Temporary members**

- (1) If a member appointed under section 17(2)(b) is or is expected to be absent or otherwise unable to perform his functions the Minister may appoint another person to act temporarily in the place of the member, and that other person while so acting has all the functions and entitlements of a member.
- (2) No act or omission of a person acting in place of another under this section shall be questioned on the ground that the occasion for his appointment or acting had not arisen or ceased.
- (3) The appointment of a person as a temporary member may be terminated by the Minister at any time.

**19. Vacation of office of member**

- (1) The office of a member appointed under section 17(2) becomes vacant if he —
  - (a) resigns by written notice addressed to the Minister;

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- (b) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
  - (c) is absent without leave of the Minister from 3 consecutive meetings of the Committee; or
  - (d) is removed from office by the Governor on grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his duties.
- (2) Where the office of a member becomes vacant otherwise than by effluxion of time the Minister may appoint another to the office, but the office of any person so appointed shall be only for the remainder of the term of the person who vacated the office of member.

**20. Sub-committees**

- (1) The Committee may from time to time with the approval of the Minister —
- (a) establish sub-committees consisting of members of the Committee or members of the Committee and such other persons as the Committee determines;
  - (b) discharge, alter or reconstitute any such sub-committee; and
  - (c) give directions to a sub-committee with respect to the performance of its functions.
- (2) A sub-committee shall give effect to any direction given by the Committee.

**21. Functions of the Committee**

The functions of the Committee are to —

- (a) investigate and make recommendations to the Minister relating to the operation and administration of this Act;
- (b) consult with any person or body with respect to the operation and administration of this Act;

- (c) consider any submissions made by any person or body on the operation or administration of this Act;
- (d) make recommendations to the chief executive officer on the issue of permits under section 15;
- (e) investigate and report to the Minister on the degree of competition within the various sectors of the retail industry; and
- (f) monitor and report to the Minister on the effects on and costs to —
  - (i) consumers;
  - (ii) retail traders; and
  - (iii) employees in the retail industry,of the operation and administration of this Act.

*[Section 21 amended by No. 1 of 1991 s. 14.]*

## **Part IV — Miscellaneous**

### **22. Covenants contrary to this Act negated**

Notwithstanding a covenant to the contrary, a person who operates a shop is not prevented from doing and is not liable for doing such acts as are necessary to comply with the provisions of this Act.

### **23. Auctions of domestic furniture at a dwelling house**

Notwithstanding anything in this Act, this Act does not apply to a *bona fide* auction of used household furniture, tools of trade, agricultural machinery or vehicles at a dwelling house or a farm that have been used for or in connection with or for the purposes of that dwelling house or farm as the case requires.

### **24. Retail shop deemed not to be closed**

For the purposes of this Act, a retail shop is deemed not to be closed if —

- (a) it is not locked or otherwise effectively secured to the complete exclusion of the public; or
- (b) the person operating the retail shop or any associated person is engaged therein in obtaining orders by any means of communication relating to the sale of any goods or the provision of any services.

### **25. Offence**

- (1) A person shall not in a retail shop —
  - (a) during a time when the shop or portion of the shop is required to be closed under this Act sell any goods or provide any services; or
  - (b) during a time when only a limited class of goods may be sold or only a limited class of services may be provided under this Act sell any goods or provide any services other than the goods or services so limited.



- (2) A person who operates a retail shop —
- (a) that is certified to be a small retail shop under section 10(3)(c) and is not owned and operated in accordance with section 10(3)(a), (b), (ba), (bb), (bc), (bd) and (be); or
  - (b) that is certified to be a small filling station under section 14B(1)(f) and is not owned and operated in accordance with section 14B(1)(a), (b), (c), (d) and (e),
- commits an offence.
- (3) A person who contravenes subsection (1) or commits an offence under subsection (2) is liable to a penalty as follows —
- For a first offence, \$5 000;
  - For a second offence, \$6 000;
  - For a third offence, \$8 000,

but in the case of a fourth or subsequent offence committed within a period of 2 years since the date of the last conviction under this Act where it is shown that the accused has engaged in a course of conduct in contravention of this Act, to a penalty of not less than \$25 000.

*[Section 25 amended by No. 47 of 2006 s. 13 and 17.]*

## **26. Control of advertising of retail shopping hours**

- (1) A person who operates a retail shop shall not himself or by his agent publish or cause to be published any statement which implies or suggests —
- (a) that at a time when a retail shop is required by this Act to be closed —
    - (i) the retail shop will be open to the admission of the public for any purpose of trade or inspection;
    - (ii) any goods or services will be sold, offered for sale or provided in the retail shop; or

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(iii) any person will be in attendance at the retail shop for the receipt by any means of orders for goods or services, or requests for the demonstration of goods or services or the delivery of goods whether on approval or not;

or

(b) that, at any time during which the retail shop is permitted or required by this Act to be open only for a specified purpose or purposes, or for the sale only of specified goods or provision only of specified services, or subject to a condition, the shop will be open for another purpose, or the sale of other goods or the provision of other services or contrary to any such condition.

Penalty: \$5 000.

- (2) In subsection (1) ***publish*** includes —
- (a) insert in any newspaper or publication in the State;
  - (b) publicly exhibit —
    - (i) in, on, over, or under any building, vehicle, or place of whatsoever kind, whether on land or water; or
    - (ii) in the air in the view of persons being or passing in or on any street or public place;
  - (c) contain in any document sent or delivered to any person or thrown or left upon any premises;
  - (d) broadcast by wireless transmission or by television; and
  - (e) make verbally.

*[Section 26 amended by No. 47 of 2006 s. 17.]*

**27. Powers of chief executive officer**

- (1) The chief executive officer may, by notice in writing require any person within such period as is specified in the notice, to furnish such information as the chief executive officer requires

for the purpose of inquiring into or ascertaining whether that person is complying with the provisions of this Act or any permit or certificate issued under this Act or as to the terms of any partnership or memorandum of association or articles of a body corporate and may require that person to produce all books and other papers whatsoever in that person's custody or under that person's control relating thereto within the time specified in the notice.

- (2) A person who fails to comply with a request by the chief executive officer made under subsection (1) commits an offence.

Penalty: \$5 000.

*[Section 27 amended by No. 1 of 1991 s. 14; No. 47 of 2006 s. 17.]*

**27A. Delegation**

The chief executive officer may, either generally or as otherwise provided by instrument of delegation, by writing signed by the chief executive officer, delegate to a person any of the functions of the chief executive officer under this Act, other than this power of delegation.

*[Section 27A inserted by No. 1 of 1991 s. 13.]*

**28. Access to books etc.**

The chief executive officer, an inspector or an authorised person shall have full and free access at any reasonable time to all buildings, places, books and other papers for any of the purposes of this Act and for any such purpose may take extracts from or copies of any such books or papers.

*[Section 28 amended by No. 1 of 1991 s. 14; No. 47 of 2006 s. 16(1).]*

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**29. Inspector or authorised person may require information**

- (1) An inspector or authorised person may question any person whom the inspector or authorised person has reasonable cause to believe may be able to assist him with his inquiries under this Act.
- (2) An inspector or authorised person may require any person who he finds committing or who he reasonably suspects has committed an offence against this Act or whom the inspector or authorised person is authorised to question under this Act, or whose name and address is in the opinion of the inspector or authorised person, reasonably required for the purpose of carrying out his duties under this Act, to state his name and address, and, if he has reasonable ground for suspecting that the name or address as stated is false, require evidence of the correctness thereof.

*[Section 29 amended by No. 1 of 1991 s. 14; No. 47 of 2006 s. 16(2) and (3).]*

**30. Obstructing an inspector etc.**

A person shall not —

- (a) assault, resist or impede, delay or in any way obstruct an inspector or an authorised person in the exercise of his powers or in the discharge of his duties under this Act;
- (b) fail, without lawful excuse, to answer any question put to him in pursuance of this Act by an inspector or authorised person or a person acting as interpreter for an inspector or authorised person or give a false or misleading answer to any such question, or refuse to sign any declaration that he is required by or under this Act to sign;
- (c) fail to comply in any respect with the lawful request, requirement, direction or order of an inspector or authorised person;

- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector or authorised person, fail to furnish that assistance or information or furnish false or misleading information;
- (e) fail, when so required by an inspector or authorised person, to produce any permit, certificate or authority held or had by him, or any book, notice, record, list or other document of whatsoever kind required by any Act to be held or kept by him, or required by this Act to be produced to an inspector, or fail to allow the inspector or authorised person upon him so producing the same, to make copies of or take extracts from it or of any part thereof or of any entries therein;
- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector or authorised person in accordance with this Act, or attempt to do so;
- (g) use any threat or any abusive or insulting language to any inspector or authorised person or any employee with respect to any inspection, examination or interrogation made by an inspector or authorised person; or
- (h) impersonate an inspector.

Penalty: \$5 000.

*[Section 30 amended by No. 47 of 2006 s. 17.]*

**31. Protection of person questioned**

A person shall not be required, under section 28 or 29, to answer any question or give any information tending to incriminate him, and before any person is questioned by an inspector or authorised person pursuant to this section the inspector shall advise the person accordingly.

**32. Secrecy**

A person who discloses or makes use of any information that has been furnished to him or obtained by him under this Act, or

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in connection with the execution of this Act, commits an offence unless that information is disclosed or used —

- (a) with the consent of the person carrying on or operating any business to which that information relates; or
- (b) for the purpose of giving effect to the objects of this Act.

Penalty: \$5 000.

*[Section 32 amended by No. 47 of 2006 s. 17.]*

**33. False information**

- (1) A person shall not —
  - (a) forge, counterfeit or utter or wrongfully make use of, any certificate or permit for the purposes of this Act;
  - (b) wilfully make or sign a false statement or declaration or return required under this Act; or
  - (c) wilfully make use of any entry, declaration or return, knowing it to be false.
- (2) A person who wilfully destroys, damages, defaces or pulls down any notice, certificate, permit, licence or other document posted or exhibited in any shop pursuant to this Act is guilty of an offence.
- (3) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: \$5 000.

*[Section 33 amended by No. 47 of 2006 s. 17.]*

**34. Vicarious liability**

- (1) When a body corporate is guilty of an offence against this Act and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such

capacity, he, as well as the body corporate, is guilty of that offence.

- (2) When the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts or omissions of a member of the body corporate in connection with his functions of management as if he were a director of the body corporate.

**35. Printing of forms and records**

All records, books, forms, or other documents required to be kept under this Act by an occupier may be printed by the Government Printer, and may be obtained from the Government Printer or an inspector at a fee to be prescribed.

**36. English language to be used**

All records, books or other documents authorised or required to be kept under this Act and all notices required to be exhibited under this Act shall be in legible writing in the English language.

**37. Consent of the chief executive officer**

Proceedings for an offence against this Act shall not be commenced without the consent in writing of the chief executive officer.

*[Section 37 amended by No. 1 of 1991 s. 14.]*

**38. Protection of officers, members and others**

No liability attaches to the chief executive officer, any inspector, authorised person, officer of the Department, or to the Committee or a sub-committee or any member of the Committee or any sub-committee for any act or omission that occurred in good faith and in exercise or purported exercise or in discharge or purported discharge of his or its functions under this Act.

*[Section 38 amended by No. 1 of 1991 s. 14.]*

**39.        Evidentiary**

In any prosecution for offences against this Act —

- (a) it is not necessary to prove the appointment of an inspector or authorised person or his authority to do any act, to issue any order, to give any direction or notice, to make any request or to take any proceedings, but nothing in this paragraph prevents the right of the accused to prove the extent of that authority;
- (b) a signature purporting to be that of the Minister, the chief executive officer or any inspector or authorised person shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;
- (c) a statement signed by the chief executive officer that a certificate or permit, of the description mentioned in the statement has or had not been issued pursuant to this Act to a person in respect of any premises specified in the statement, and, in the case of a certificate or permit that has been so issued, as to the date of issue of, and the particulars contained in, the certificate or permit, is evidence of the matters specified in the statement;
- (d) the allegation in or averment in any charge that any building, premises or other place is, or was at the time stated therein, a retail shop, is evidence thereof;
- (e) evidence of a person being found in any shop is proof that the person was employed therein unless the contrary is proved;
- (f) it shall not be necessary to prove the limits of any area, part of an area, radius or zone prescribed by or under this Act, but this paragraph does not prevent the right of the accused to prove the facts relating thereto;
- (g) a statement signed by the chief executive officer stating the class to which any retail shop specified in the certificate belongs, or stating that a class of articles as so



specified are usually sold in a specified class of business, is proof of the matters so specified until the contrary is proved; and

- (h) any work done in a retail shop shall be deemed to have been done, or any person employed therein shall be deemed to have been employed, with the knowledge and by the authority of the person operating the retail shop unless the contrary is proved.

*[Section 39 amended by No. 1 of 1991 s. 14; No. 84 of 2004 s. 80 and 82.]*

**40. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting the generality of this subsection, the regulations may —
  - (a) prescribe the forms and documents that are required to be given under this Act or kept for the purposes of this Act;
  - (b) prescribe requirements relating to the giving, furnishing and keeping of information and forms under this Act;
  - (c) provide for and regulate applications for and the granting of permits, certificates or other authorities under this Act;
  - (d) prescribe fees payable under this Act;
  - (e) prescribe penalties not exceeding \$2 000 for an offence against any regulations under this Act and provide in the case of a continuing offence for a penalty not exceeding \$500 for every day during which the offence continues.

*[Section 40 amended by No. 47 of 2006 s. 17.]*

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**41. Minister to review and report on Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 3 years from the commencement of the *Retail Shops and Fair Trading Legislation Amendment Act 2006* section 14<sup>1</sup>.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause a copy of the report to be laid before each House of Parliament.  
*[Section 41 inserted by No. 47 of 2006 s. 14.]*

**42. Savings**

- (1) Notwithstanding anything in section 10(3) or 10(4) where a retail shop was immediately before the commencement day an exempted shop for the purposes of the *Factories and Shops Act 1963*<sup>3</sup> the person operating the retail shop is entitled to be issued with a permit under section 15 of this Act to sell at that retail shop goods that were prescribed to be exempted goods under the regulations made under that Act and in force immediately before the commencement day and to remain open as though section 12 of this Act had not come into operation.
- (2) In subsection (1) —  
**commencement day** means the day on which this Act comes into operation.  
*[Section 42 amended by No. 73 of 1994 s. 4.]*

*[43. Deleted by No. 47 of 2006 s. 15.]*

## Notes

- <sup>1</sup> This is a compilation of the *Retail Trading Hours Act 1987* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Retail Trading Hours Act 1987</i>	123 of 1987	31 Dec 1987	s. 1 and 2: 31 Dec 1987; Act other than s. 1 and 2: 1 Sep 1988 (see s. 2 and <i>Gazette</i> 12 Aug 1988 p. 2695)
<i>Retail Trading Hours Amendment Act 1991</i>	1 of 1991	17 May 1991	s. 1 and 2: 17 May 1991; Act other than s. 1, 2 and 12: 2 Aug 1991 (see s. 2 and <i>Gazette</i> 2 Aug 1991 p. 3991); s. 12: 1 Nov 1991 (see s. 2 and <i>Gazette</i> 1 Nov 1991 p. 5588)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Pawnbrokers and Second-hand Dealers Act 1994 s. 100</i>	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<b>Reprint of the <i>Retail Trading Hours Act 1987</i> as at 18 Jan 2002</b> (includes amendments listed above)			
<i>Retail Trading Hours Amendment (Referendums) Act 2004</i>	78 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Retail Shops and Fair Trading Legislation Amendment Act 2006 Pt. 2</i> <sup>4</sup>	47 of 2006	4 Oct 2006	11 May 2007 (see s. 2 and <i>Gazette</i> 11 May 2007 p. 2017)
<i>Liquor and Gaming Legislation Amendment Act 2006 s. 115</i>	73 of 2006	13 Dec 2006	7 May 2007 (see s. 2(2) and <i>Gazette</i> 1 May 2007 p. 1893)
<b>Reprint 2: The Retail Trading Hours Act 1987 as at 16 Nov 2007</b> (includes amendments listed above)			
<i>Training Legislation Amendment and Repeal Act 2008 s. 60</i>	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))

<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

<sup>3</sup> Repealed by the *Industrial Relations Legislation Amendment and Repeal Act 1995*.

<sup>4</sup> The *Retail Shops and Fair Trading Legislation Amendment Act 2006* s. 18 reads as follows:

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**18. Validation**

An order made, or purporting to have been made, under the *Retail Trading Hours Act 1987* section 5, 10, 12, 13 or 14 that had effect, or purported to have effect, immediately before the commencement of this section —

- (a) is taken to have been validly made under that section of that Act;
- (b) continues, on and after that commencement, to have effect and the force of law; and
- (c) in relation to an order made under section 5, 12, 13 or 14 of that Act that continues to have effect and the force of law under paragraph (b) — may be amended or revoked as if it had been made under section 12E of that Act as amended by this Act.

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